CITY OF WINNIPEG POLICY NO. PD-026

POLICY TITLE	ADOPTED BY	EFFECTIVE DATE
Real Estate – Declaration as Surplus and Sale of Property	City Council	September 29, 2021
ORIGIN / AUTHORITY	**CITY POLICY NO**	**MOST RECENT CONSOLIDATION**
City Council	PD-026	September 26, 2024

This document is an office consolidation of amendments to the policy. The City of Winnipeg expressly disclaims any responsibility for errors or omissions.

1. Purpose:

The requirements to declare City-owned property surplus, negotiate the terms and conditions of a sale, easement or land exchange, and the approval authority for the sale of City-owned property are contained herein.

2. Definitions:

"Affordable Housing" means a single- or two-family house, or a multi-family or mixed use building where at least 30% of the units are rented for a maximum of 80% of the median market rent as determined by the Canada Mortgage and Housing Company or at Province of Manitoba Affordable Housing Rental Rates as posted annually, or sold at a rate affordable to an individual or family with an income below the Province of Manitoba Affordable Housing Rental Program Income Limits as posted annually;

(added by Council July 18, 2024)

"Appraised Value" means the fair market value of a particular property as determined by a designated real estate appraiser who is a member in good standing of the Appraisal Institute of Canada;

"Broker" means a registered real estate broker that is licensed to buy and sell real estate;

"Broker Program" means engagement of a registered real estate broker at a predetermined fee to sell City-owned property;

"Calls to Action" means the 94 Calls to Action contained within the Truth and Reconciliation Commission of Canada: Calls to Action;

“Calls for Justice” means the 231 Calls for Justice within the Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women, Girls and Gender Diverse People;

(added by Council July 18, 2024)

“CAO” means the Chief Administrative Officer of the City of Winnipeg;

“Charter” means The City of Winnipeg Charter, S.M. 2002, c. 39, as amended from time to time;

“Circulation” or “Circulate”, in respect of the proposed sale of surplus City-owned property, means a canvass of affected internal and external stakeholders for comments on a proposed declaration of surplus City-owned property;

“City” means the municipal corporation of The City of Winnipeg, continued under section 8 of The City of Winnipeg Charter, S.M. 2002, c. 39;

“City Property” means all or a portion of the interests, benefits and rights inherent in the ownership of physical real estate that is owned by the City;
“Commission” means the payment of a fee to a registered real estate broker who closes the sale of City-owned property;

“Council” means the municipal Council of the City;

“Designated Committee” means the committee of Council responsible for providing policy advice to Council in respect of planning and land use, which, on the date this policy is enacted, is the Standing Policy Committee on Property and Development, Heritage and Downtown Development;

“Direct Sale” means a sale of City-owned property which has not been marketed to the general public;

“Director of PPD” means the director of the City department responsible for planning and land use, which, on the date this policy is enacted, is the Director of the City’s Planning, Property and Development Department;

“Distressed Property” means non-City-owned property which uninhabitable due to its condition or is financially burdened to the extent that the owner no longer has the means to maintain the property;

(added by Council July 18, 2024)

“Easement” means the right of one land owner to access, cross or otherwise use the land of another in a particular manner, which right can be permanent or temporary in nature;

“Economic Development Transaction” means the sale of City-owned property for a development proposal requiring completion within three years, where a minimum of $1.0 million in Provincial or Federal Funding, or combination thereof, has been secured for the said development;

“Environmental Site Assessment” means a site investigation to determine whether the site contains contaminants;

“Fees and Charges Schedule” means the annual public list of fees, charges, rates or rents charged for a variety of City services;

“Historical Resource” means a property which has been designated and protected as a historical resource through Historical Resource Bylaw No. 55/2014, as amended from time to time;

“Land Dedication Reserve Fund” means an accounting fund managed by the City in which funds resulting from the sale of City-owned parkland property accumulates;

“Land Exchange” means the sale of City-owned property in exchange for the acquisition of non-City-owned property;

“Land Operating Reserve Fund” means the Land Operating Reserve Fund approved by Council on May 16, 1973 and as amended from time to time;

“Marketed” means the public advertisement for the sale of City-owned property;

“Market Value” means the most probable price that a property should obtain in a competitive and open market with the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus;

“National Action Plan” is a strategic framework developed to outline specific goals, objectives and actions to drive transformative change to end systemic racism and violence against Indigenous women, girls, and 2SLGBTQQIA+ people;

(added by Council July 18, 2024)

“Non-Profit Organization” means an organization that does not generate a profit that is returned to shareholders, partners or individuals, but does not include golf courses;

“Parkland” means a City-owned property used for park or cemetery purposes on the day the Charter came into force or acquired after that date by the City for park or cemetery purposes;

(amended by Council July 18, 2024)

“Principles of Reconciliation” means the ten Principles of Reconciliation outlined in Winnipeg’s Indigenous Accord;

“Purchaser” means the proponent or proponents buying City-owned property;

“Public Service” means the employees of the City of Winnipeg but does not include elected officials;

“Sale” means the transfer of the full or partial bundle of rights in land, including but not limited to fee simple ownership or an easement;

“Stakeholder” means any City department, person, corporation, organization or agency that has a general or specific interest in any City-owned property that includes, but is not limited to, utility agencies, crown corporations, government agencies, the Provincial Government or the Federal Government;

“Surplus” means property that Council or its delegated authority has determined is not required for civic purposes;

“Taking Title Without Compensation” means the process defined in Part 5 Division 4 of the Charter;

“Tax Sale” means a property as defined in Part 8 Division 4 of the Charter;

“Unbuildable Land” means a property, excluding Parkland or City property used for cemetery purposes, that does not conform with the provisions of the Winnipeg Zoning By-law No. 200/2006 or the Downtown Winnipeg Zoning By-law No. 100/2004, or property for which the highest and best use as determined by an accredited appraiser is for consolidation with the adjacent non-City-owned property;

“Ward Councillor” means the elected official that represents one of the electoral wards within the City of Winnipeg within which the City-owned property is located; and

“Winnipeg’s Climate Action Plan" means the City’s strategy to reduce greenhouse gas emissions that was adopted by Council on September 20, 2018 and as amended from time to time.

3. Declaration as Surplus and Sale of City Property Policy

3.1 Declaration as Surplus City Property

A. The Public Service must Circulate City Property, for a minimum of ten business days to Stakeholders and the Ward Councillor, unless otherwise specified by the Director of PPD, prior to recommending that the City Property be declared Surplus.

i. Stakeholders may identify (if necessary):

- A civic departmental need, if any
- Easement requirements
- Objection to a Sale

ii. The City department having jurisdiction over the City Property, or programs on the City Property, must be consulted regarding the Declaration of Surplus City Property.

iii. Until January 1, 2027, prior to City land being declared surplus, the Housing Accelerator Fund Office will review the land for housing potential.

(Amended by Council, September 26, 2024)

B. Easements are not required to be declared surplus, but do require Circulation as set out in Section 3.1(A).

C. Should a City Stakeholder object to a proposed Sale, the City Stakeholder must have a demonstrated need for the City Property, evidenced through existing infrastructure, recommended project alignment or identified funding within an adopted Capital Budget and Five-Year Forecast.

D. The Ward Councillor will be notified subsequent to a completed Circulation if the Public Service intends to recommend that the City Property be declared Surplus; such notification will be acknowledged by the Ward Councillor or attempted a minimum of three times by the Public Service.

E. The Public Service will obtain a Phase I Environmental Site Assessment for Surplus City Property that the Public Service suspects contains a use that may have environmentally impacted the City Property (e.g. former Public Works yard, former Police station, etc.).

F. The Public Service will publish all Surplus City Property, not including closed roads, on the City's website within 60 days of the City Property being declared Surplus.

3.2 Sale of City Property

A. Sales must:

i. Obtain the best value for the City, which may or may not be Market Value

- A price less than Market Value may be considered for Sales of Unbuildable Land (Section 3.2(B)(i)), Sales qualifying as an Economic Development Transaction (Section 3.2(B)(v)), Sales to Non-Profit Organizations (Section 3.2(C)), temporary easements, public utility easements, Sales to an organization established by the City or Sales that create Affordable Housing;

ii. Be marketed, except for Direct Sales (Section 3.2(B));

a. The evaluation criteria for the sale of the properties identified in Section 4.2(C)(i) intended for affordable housing is as follows, subject to any minor modifications necessary to implement this intent:

1. Total offering price and potential tax revenue generated by the proposed development (5%);

2. Total number of units (15%)

3. Evidence of available funding to complete the proposal (25%)

4. Experience and/or history of successful projects and endeavors carried out by the Proponent (25%);

5. Social impacts of the project, including affordability criteria that include:

A. Less than 80% of the Median Market Rent for the area, in line with CMHC's Affordable Housing Fund Criteria, maintained for twenty years; or

B. At Province of Manitoba Affordable Housing rental rates, maintained for twenty years (30%)

b. The above will remain in effect until January 1, 2027.

(amended by Council, September 26, 2024)

iii. Support orderly development through Council-approved development policies and/or other Council policies;

iv. Be open and transparent, ensuring all prospective Purchasers receive equal information and/or access;

v. Prioritize submissions from Non-Profit Organizations to construct Affordable Housing on City Property where possible;

vi. Prioritize submissions from for-profit organizations to construct Affordable Housing on City Property where possible, subject to the Purchaser providing evidence of government funding, or commitment of funding, to ensure affordability targets are met;

vii. Be declared Surplus to the City's needs;

viii. Be approved by Council or its delegated authority, and in all cases, the Ward Councillor will be provided notice of the Public Service recommendation prior to approval***;***

ix. First be Marketed to Non-Profit Organizations who intend to deliver Affordable Housing on City Property which is suitable for residential development (excluding condominiums).

(amended by Council July 18, 2024)

x. All sale agreements intended for affordable housing and coorindated through the HAF program until January 1, 2027 will include a condition for plan approval by the relevant Community Committee.

(amended by Council, September 26, 2024)

B. The Public Service is authorized to pursue a Direct Sale, but is not obligated to do so, where at least one of the following criteria is met:

i. Unbuildable Land is sold to an adjacent owner(s)

- The purchase price of the City Property may be Market Value, or a lesser amount if the Purchaser, at their sole cost, consolidates the City Property with non-City Property through a Development Application;

ii. City Property is sold to a government, government agency, or organization established by the City where:

- The Sale aligns with Council direction or a Council mandate;
- The City Property is required for a capital project; or
- The Sale addresses a public need or operational requirement;

iii. The Sale will facilitate Affordable Housing or mixed-use development that includes Affordable Housing;

iv. The City Property forms part of a Land Exchange that benefits a Council-approved land acquisition program or is required by a civic department for a public use;

v. The Sale meets the criteria of an Economic Development Transaction

- The Sale must include a covenant to construct to ensure the development is completed;

vi. The Sale facilitates one of the Principles of Reconciliation, one of the Calls to Action**,** an objective or goal of the National Action Plan, or one of the Calls for Justice;

vii. The Sale addresses a specific recommendation or goal within Winnipeg's Climate Action Plan.

(amended by Council July 18, 2024)

C. Excluding Affordable Housing Sales, the City will consider, where appropriate, sales of City Property to Non-Profit Organizations at below Market Value where:

i. The Tenant is an active, registered Non-Profit Organization;

ii. The Non-Profit Organization provides for activities that are compatible with the City's needs;

iii. The Non-Profit Organization provides a service for which there is a current and projected need in that location;

iv. The Non-Profit Organization must provide evidence of available funding and/or financial commitment to complete the project;

v. A reversionary interest in favour of the City is registered against the City Property that is sold:

- The reversionary interest may be exercised when the City Property has reached the end of the project's life or if the Non-Profit Organization has failed to develop the City Property (covenant to construct);
- A reversionary interest is not applicable if the City Property is required to be consolidated with non-City Property through a plan of subdivision or plan of survey, unless the reversionary interest is for right-of-way.

(amended by Council July 18, 2024)

D. Where a Purchaser has requested entry onto City Property in advance of the date of possession, the City may enter into an enter to construct agreement with the Purchaser where all six of the following criteria are met:

i. Council or its delegated authority has approved the Sale

ii. The terms and conditions of the Sale have been successfully negotiated as between the City and the Purchaser

iii. The Purchaser satisfies insurance requirements certified by the City's Corporate Risk Manager to be adequate to protect the City's interests

iv. The Purchaser agrees to fully release and indemnify the City

v. Unless the City deems restoration would harm the City Property, the Purchaser agrees to restore the City Property, at its sole cost, effort and expense, to its original condition if the Sale is not completed, for which evidence of available funding (e.g. letter of credit) shall be required

vi. Meet any other term or condition considered necessary by the Director of Legal Services and City Solicitor to adequately protect the interests of the City.

E. Where a Purchaser has requested entry onto City Property to carry out testing for geotechnical, archaeological or Environmental Site Assessments after the Sale has been approved but prior to successfully negotiated terms and conditions, entry may be granted where:

i. The Purchaser satisfies insurance requirements certified by the City's Corporate Risk Manager to be adequate to protect the City's interests

ii. The Purchaser agrees to fully release and indemnify the City

iii. The Purchaser agrees to release the results of the geotechnical, archaeological or Environmental Site Assessments to the City at the request of the City

F. The City will recognize the participation of a Broker representing a Purchaser in a completed Sale transaction of a City Property:

i. The City will pay a Commission of up to 2% of the purchase price, to a maximum of $500,000; or the percentage disclosed within the offer to purchase or purchase and sale agreement

ii. The Commission is payable out of the Sale proceeds

iii. The Commission forms part of the offer evaluation

iv. The Commission is payable upon Title transfer

G. Unless directed by other Council policies, gross proceeds of a Sale are credited to either the Land Operating Reserve Fund or the Land Dedication Reserve Fund in accordance with the Contribution in Lieu of Land Dedication Reserve Fund Policy.

H. A summary of all completed Sales will be posted on the City's website annually.

3.3 Land Exchanges

A. All provisions of Sections 3.1 and 3.2 apply to the Sale of City Property, where the City Property is included in a Land Exchange.

3.4 Closed Roads

A. All roads closed through a Development Application shall be purchased at market value, without credit for any other road openings unless the road intended to be closed was opened within the past 20 years or extenuating circumstances exist.

4. Responsibilities

4.1 Director of PPD is authorized to:

A. Declare any of the following City Property Surplus to the City's needs:

i. Unbuildable Land***;***

ii. City Property acquired through Tax Sale***;***

iii. City Property acquired through Taking Title Without Compensation***.***

iv. Distressed Property acquired through donation or purchase

B. Subject to Sections 4.4(B) and 4.4(C), approve all Sales, Land Exchanges and Sale settlement claims up to and including $300,000.00 where:

i. Subject to subsection ii., the sale price must be at least 80% of the Appraised Value for all transactions that exceed $10,000.00; or

ii. The sale price can be less than 80% of the Appraised Value for all transactions that deliver Affordable Housing

- The Purchaser is required to commence development on the City Property within a timeframe determined by the Director of PPD, otherwise the City Property reverts back to the City.

C. Approve all Sales that have pre-approved prices from the Designated Committee.

D. Transfer the jurisdiction of City Property to another civic department, excluding transfers defined in Section 4.4(D), subject to:

i. The civic department having jurisdiction over the City Property must concur with the transfer.

E. Authorize the demolition or removal of any building or structure on a City Property, except for City Property protected under a by-law, which is:

i. Uneconomic to maintain;

ii. Structurally unsound;

iii. Obtained through tax sale; or

iv. Obtained through taking title without compensation.

F. Authorize the right to an applicant to include City Property within a Development Application, provided that the City Property has been circulated (Section 3.1(A)).

G. Discharge, amend or register caveats on a certificate of title that relate to a Sale:

i. Amendments to a mortgage are permitted only where the amended principal amount does not exceed the original principal amount.

H. Elect to hold a public auction for a Tax Sale, where the City has not exercised its right to purchase the Tax Sale.

I. Negotiate and approve the terms and conditions of the following agreements and documents:

i. Offer to Purchase and/or Purchase and Sale

ii. Land Exchange

iii. Easement

iv. Temporary Easement

v. Enter to Construct

vi. Amending

vii. Assignment

viii. Confidentiality

ix. Letter of Intent

x. Memorandum of Understanding

xi. GST Declaration and Indemnity

xii. Ancillary Agreements or such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

J. Notwithstanding the above, the Director of PPD, at their sole discretion, may refer any matter within their delegation of authority to the Designated Committee.

(amended by Council July 18, 2024)

4.2 CAO is authorized to:

A. Subject to Sections 4.4(B) and 4.4(C), approve all Sales, Land Exchanges and Sale settlement claims exceeding $300,000.00 up to and including $700,000.00 where:

i. Sale price must be at least 80% of the Appraised Value.

B. Notwithstanding the above, the CAO, at their sole discretion, may refer any matter within their delegation of authority to the Designated Committee

C. Despite Sections 4.2(A), 4.3 and 4.4, the CAO is authorized, until January 1, 2027, to:

i. Declare the following City-owned properties intended for affordable housing as surplus, subject to the circulation requirements set out in the Declaration as Surplus and Sale of Property Policy:

a. 825 Tache Avenue

b. 795 William Avenue

c. 395 Pacific Avenue

d. 425 Osborne Street

e. 1350 Pembina Highway

f. 545-569 Watt Street

g. 22 Granite Way

ii. Approve any sale, for any amount, regardless of appraised value, for the properties identified in section 4.2(C)(i) that is intended for affordable housing, subject to a sale condition that the land must remain affordable housing through the life of the agreement

(amended by Council, September 26, 2024)

4.3 Designated Committee is authorized to:

A. Subject to Section 4.4(B) and 4.4(C), approve all Sales, Land Exchanges and Sale settlement claims in excess of $700,000.00 or where the sale price is less than 80% of the Appraised Value;

B. Approve a Broker Program; and

C. Authorize pre-approved Sale prices, where applicable.

D. Approve the evaluation criteria for Sales to be marketed through a request for proposal, which includes the following:

i. Alignment to Winnipeg's Climate Action Plan should comprise at least 10% of the evaluation criteria, where possible; and

ii. The City Stakeholders that develop the RFP criteria shall include a representative from the planning office, as well as a representative from the climate action office.

iii. The Departments involved in developing the evaluation criteria must be disclosed.

4.4 Council is authorized to:

A. Declare all City Property Surplus to the City's needs, except for City Property identified in Section 4.1(A);

i. Approval from two-thirds of all members of Council is required for the declaration of surplus for Parkland or City Property used for cemetery purposes.

B. Approve all Sales, Land Exchanges or Sale settlement claims of Parkland or City Property used for cemetery purposes subject to

i. Approval of two-thirds of all members of Council, in accordance with the Charter;

C. Approve all Sales of City Property which have been designated as a Historical Resource;

D. Approve transfers of jurisdiction to another civic department for Parkland or City Property used for cemetery purposes subject to:

i. Approval of two-thirds of all members of Council